

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE****Serial No. 09/701455****Art Unit 1744****Filed 02/05/2001****Examiner: McKean, Leigh****Inventor: Paul E. Adler****Title: SLURRY TREATMENT AND SHIPPING METHOD****United States Patent and Trademark Office****Fax: 703.305.8755****PETITION TO WITHDRAW HOLDING OF ABANDONMENT**

Applicant petitions the Commissioner under 37 CFR §1.181(a) to withdraw the holding of abandonment of this application for failure to timely pay the issue fee.

The following facts are pertinent to this Petition:

1. Applicant's undersigned attorney yesterday received a Notice of Abandonment dated 03/29/2005 (attachment A), which gave as the reason: "Insufficient Funds in Deposit Account", noting that "The submitted fee of \$147 is insufficient. A balance of \$553 is due.

2. A "Notice of Allowance and Fee(s) Due" in this application was mailed 11/22/2004 and received by this attorney November 24, 2004 (attachment B). The issue fee of \$685 was indicated as due by 02/22/2005.

3. This attorney mailed a Transmittal of Issue Fee on February 10, 2005 (attachment C), authorizing payment of an issue fee of \$700 (fees had changed since Notice of Allowance issued) by charging this attorney's Deposit Account 071971, and to "Charge any additional fee required."

4. Applicant's Deposit Account Statement for February, 2005 (Attachment D) indicates that the account was charged \$147 (the balance on that day) on 02/16 for "09701455" (this application).

5. This Deposit Account had an "e-replenishment" of \$1500 on 02/17/2005.

6. This Deposit Account had a **balance of \$1500** at all times from 02/17/2005 through 02/22/2005, an amount well in excess of the \$557 “deficiency”.

7. The USPTO was given an **open-ended authorization on 02/10/2005 (and is still authorized)** to charge the issue fee and any other fee required to this Deposit Account 071971.

8. No attempt was made to contact this attorney as to any fee deficiency until the Notice of Abandonment was received.

9. Apparently, the USPTO made no effort to charge the momentary deficiency of \$557 to Deposit Account 071971, **although authorized to do so.**

10. The USPTO independently decided when to charge this Deposit Account and, apparently, to try only once. Had the USPTO sought payment of the issue fee on or after 02/17/2005, or bothered to seek the “deficiency” amount from this Deposit Account at any time after 02/16/2005 and up to the due date of 02/22/2005, this Petition would be wholly unnecessary.

11. At no time did the USPTO credit the “insufficient” \$147 amount charged for the issue fee back to this Deposit Account.

12. It is well-known that different operations in the USPTO charge deposit accounts authorized amounts at varying times after authorization. It is this attorney’s experience in 40 years of practice that such charges may be made from a few days to several weeks after authorization. When the deposit account is charged is solely within the province of the USPTO. Such authorizations are open-ended.

In view of the above, it is submitted that the USPTO, by retaining the \$147, agreed to accept partial payment for the issue fee **at that time**, and **was obligated** to either **(a) timely notify** this attorney of the alleged deficiency, or **(b) seek the “deficiency” amount** from Deposit Account 071971 **before the due date of 02/22/2005.** Any other conclusion would be manifestly inequitable to the Applicant herein.

Ser. No. 09/701445 – Petition To Withdraw Holding of Abandonment

3

Therefore, it is clear that the USPTO erred in declaring that Application Serial No. 09/701455 is Abandoned.

**Accordingly, Applicant requests that the USPTO withdraw the Holding of Abandonment, charge the amount of \$557 to Deposit Account No. 071971, as previously authorized, and issue a patent.**

Respectfully submitted,

Paul E. Adler

By David A. Greenlee

David A. Greenlee, Attorney, Reg. No. 20825

P.O. Box 340557

Columbus, OH 43234-0557

Tel: 614.854.9150

Fax: 614.854.9155

Docket 30427

April 1, 2005

This certifies that this document was transmitted via facsimile to USPTO, Office of Patent Publications at 703.305.8755. on  
April 1, 2005 by David A. Greenlee

David A. Greenlee

(A)



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,455	02/05/2001	Paul E. Adler	30427	9965
4717	7590	03/29/2005	EXAMINER	
DAVID A. GREENLEE			MCKANE, ELIZABETH L	
P.O. BOX 340557			ART UNIT	
COLUMBUS, OH 43234			PAPER NUMBER	

1743

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**RECEIVED**

MAR 31 2005

**DAVID A. GREENLEE**

(A)

<b>Notice of Abandonment</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/701,455	GREENLEE, DAVID A	
	<b>Examiner</b>	<b>Art Unit</b>	
	MCKANE, ELIZABETH L	1744	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

This application is abandoned in view of:

1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☒ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☒ The submitted fee of \$147.00 is insufficient. A balance of \$553.00 is due.  
The issue fee required by 37 CFR 1.18 is \$700.00. The publication fee, if required by 37 CFR 1.18(d), is \$300.00.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

Insufficient Funds in Deposit Account

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

(A)

Respond to the Notice of Abandonment by one of the following:

**Petition To Withdraw Holding of Abandonment (See MPEP 711.03(c) I) and 37 CFR § 1.181) No fee required**

Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR § 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action. Any petition under 37 CFR § 1.181, to withdraw the holding of abandonment not filed within 2 months of the mail date of a Notice of Abandonment may be dismissed as untimely under 37 CFR § 1.181(f). In order for a petition to be granted, the evidence must be sufficient according to one of the following standards:

- 37 CFR § 1.8(b) Certificate of Mailing
- 37 CFR § 1.10 "Express Mail" mailing
- MPEP 503 Postcard Receipt as Prima Facie Evidence

Petition To Withdraw Holding Of Abandonment should be addressed as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Mail Stop: Issue Fee, Alexandria, VA 22313-1450

By facsimile: 703-305-8755 or 703-305-4372

**Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action (See MPEP 711.03(c) II). No fee required**

Where an applicant contends that the original Notice of Allowance and Issue Fee Due was never received. If adequately supported, the Office may grant the petition and remail the Office action. The showing required establishing non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petition should be addressed to the Technology Center handling the application as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450  
(Mark attention of a particular office or individual)

By facsimile: Technology Center numbers posted at <http://www.uspto.gov/september1/faxnotice.htm>

**Petition To Revive An Abandoned Application (See MPEP 711.03(c) III)**

Where there is no dispute as to whether an application is abandoned (e.g. the applicant's contentions merely involve the cause of abandonment) a petition under 37 CFR § 1.137 (a) unavoidable or (b) unintentionally (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

Petitions under 37 CFR § 1.137 should be addressed to the Office of Petitions as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450

By hand: Crystal Plaza 4, Rm. 3C23, 2201 Clark Place, Arlington, VA

By facsimile: 703-308-6916

Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR § 1.137(a) and Unintentionally Under 37 CFR 1.137(b), forms available at USPTO website – <http://www.uspto.gov>

Note: Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment.



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

## NOTICE OF ALLOWANCE AND FEE(S) DUE

4717 7590  
DAVID A. GREENLEE  
P.O. BOX 340557  
COLUMBUS, OH 43234

11/22/2004  
**RECEIVED**  
NOV 24 2004  
DAVID A. GREENLEE

EXAMINER	
MCKANE, ELIZABETH L	
ART UNIT	PAPER NUMBER
1744	
DATE MAILED: 11/22/2004	

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,455	02/05/2001	Paul E. Adler	30427	9965

TITLE OF INVENTION: SLURRY TREATMENT AND SHIPPING METHOD

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$685	\$0	\$685	02/22/2005

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

## HOW TO REPLY TO THIS NOTICE:

## I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER:** Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

**TRANSMITTAL OF PAYMENT OF ISSUE FEE (Small Entity)**

Docket No.

30427

(37 C.F.R. 1.311)

Applicant(s): ADLER, PAUL E.

C

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/701,455	02/05/2001	MCKANE, ELIZABETH		1744	9965

Invention: SLURRY TREATMENT AND SHIPPING METHOD

**Mail Stop Issue Fee**  
**COMMISSIONER FOR PATENTS**  
**P.O. Box 1450**  
**Alexandria, VA 22313-1450**

Transmitted herewith are the following for the above-identified application.

- ☒ Issue Fee Transmittal Form PTOL-85
- ☒ Utility Fee: \$ 700.00    ☐ Design Fee: \_\_\_\_\_    ☐ Plant Fee: \_\_\_\_\_
- ☐ Publication Fee: \_\_\_\_\_
- ☐ A check in the amount of \_\_\_\_\_ is attached.
- ☒ The Director is hereby authorized to charge and credit Deposit Account No. 071971 as described below.
- ☒ Charge the amount of \$700.00
- ☒ Credit any overpayment.
- ☒ Charge any additional fee required.
- ☐ Payment by credit card. Form PTO-2038 is attached.

**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.



Signature

Dated: FEBRUARY 10, 2005

DAVID A. GREENLEE  
P.O. BOX 340557  
COLUMBUS, OHIO 43234-0557

cc:

**Certificate of Transmission by Facsimile**  
This certificate may only be used if paying  
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I certify that this document and authorization to charge  
account is being facsimile transmitted to the United States  
and Trademark Office (Fax )  
on

(Date)

Signature

Typed or Printed Name of Person Signing Certificate

**Certificate of Mailing by First Class Mail**

I hereby certify that this correspondence is being deposited  
with the United States Postal Service with sufficient postage as  
first class mail in an envelope addressed to "Mail Stop Issue  
Fee, Commissioner for Patents, P.O. Box 1450, Alexandria, VA  
22313-1450" [37 CFR 1.8(a)] on

FEBRUARY 10, 2005

(Date)

Signature of Person Mailing Correspondence

SHAWNA L. ULICNE

Typed or Printed Name of Person Mailing Correspondence



## PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail**

**Mail Stop ISSUE FEE**  
**Commissioner for Patents**  
**P.O. Box 1450**  
**Alexandria, Virginia 22313-1450**  
**(703) 746-4000**

or **Fax**

**INSTRUCTIONS:** This form should be used for transmitting the **ISSUE FEE** and **PUBLICATION FEE** (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

4717

7590

11/22/2004

DAVID A. GREENLEE  
 P.O. BOX 340557  
 COLUMBUS, OH 43234

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

## Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (703) 746-4000, on the date indicated below.

SHAWNNA L. ULICNE	(Depositor's name)
SHAWNNA L. ULICNE	(Signature)
FEBRUARY 10, 2005	(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,455	02/05/2001	Paul E. Adler	30427	9965

TITLE OF INVENTION: SLURRY TREATMENT AND SHIPPING METHOD

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$685 \$700-	\$0	\$685 \$700-	02/22/2005

EXAMINER	ART UNIT	CLASS-SUBCLASS
MCKANE, ELIZABETH L	1744	422-001000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively,
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1. DAVID A. GREENLEE

2. \_\_\_\_\_

3. \_\_\_\_\_

## 3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.111. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

## 4a. The following fee(s) are enclosed:

- ☒ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☒ Advance Order - # of Copies 5

## 4b. Payment of Fee(s):

- ☐ A check in the amount of the fee(s) is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☒ The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number 071971 (enclose an extra copy of this form).

## 5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.
- ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

The Director of the USPTO is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above. NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant, a registered attorney or agent, or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature: David A. GreenleeDate: 2/10/05Typed or printed name: DAVID A. GREENLEERegistration No. 20825

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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**United States  
Patent and  
Trademark Office**

## **Deposit Account Statement**

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**Requested Statement Month:** February 2005  
**Deposit Account Number:** 071971  
**Name:** DAVID A GREENLEE  
**Attention:**  
**Address:** P.O. BOX 340557  
**City:** COLUMBUS  
**State:** OH  
**Zip:** 43234  
**Country:** UNITED STATES OF AMERICA

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
02/01	97	78176261		6003	\$100.00	\$1,517.00
02/04	10	5665221		2552	\$1,150.00	\$367.00
02/07	19	10213984	30445	2814	\$55.00	\$312.00
02/07	37	E- REPLENISHMENT		9203	- \$1,000.00	\$1,312.00
02/10	48	09396112	35007	2501	\$700.00	\$612.00
02/10	49	09396112	35007	8001	\$15.00	\$597.00
02/10	207	6276042		2551	\$450.00	\$147.00
02/16	330	09701455	30427	1506	\$147.00	\$0.00
02/17	10	E- REPLENISHMENT		9203	- \$1,500.00	\$1,500.00
02/25	67	60654974	30712	2005	\$100.00	\$1,400.00
		START BALANCE	SUM OF CHARGES	SUM OF REPLENISH	END BALANCE	
		\$1,617.00	\$2,717.00	\$2,500.00	\$1,400.00	